

In the Matter of)
)
 HUGHES NETWORK SYSTEMS)
)
 Request for Waiver of Section 101.111)
 of the Commission's Rules)

Released: August 31, 2000

⁴ Amendment of the Commission's Rules to Relocate the Digital Electronic Message Service from the 18 GHz Band to the 24 GHz Band and To Allocate the 24 GHz Band For Fixed Service, *Order*, 12 FCC Rcd 8266, 8268-69 ¶ 6 (WTB PSPWD 1997) (*Modification Order*).

stringent emission mask.⁵ This modified emission mask waiver was granted to facilitate relocation of DEMS operations from the 18 GHz band in light of the lack of available 24 GHz band equipment. As a result, several DEMS licensees modified 23 GHz band equipment for use in the 24 GHz band.

3. Section 101.139 requires that transmitters be certificated by the Commission for use under the applicable rules of Part 101.⁶ Hughes has specifically designed transmitters for Teligent that operate with the modified emissions parameters. On April 10, 2000, Hughes filed an application for certification of these 24 GHz band transmitters with the Commission's Office of Engineering and Technology (OET).⁷ Hughes now seeks clarification that Teligent's waiver of the emission mask requirement permits the certification of Hughes equipment manufactured to those relaxed specifications. In the alternative, Hughes requests a waiver of Section 101.139 of the Commission's Rules should it be determined that a separate waiver is required.⁸

III. DISCUSSION

4. Hughes argues first that a rule waiver is not required, because its equipment may be certificated under the waiver granted to Teligent in connection with its modified 24 GHz band licenses. We disagree. The Teligent waiver only relieves Teligent from complying with the emission mask requirement; however, it does not waive other rules to permit third parties to manufacture non-compliant equipment. Further, we believe that a separate rule waiver is necessary due to the recent adoption of a new emission mask for the 24 GHz band.⁹ As a result, we deny Hughes's request for a ruling that Teligent's waiver of the emission mask requirement extends to the certification of Hughes equipment manufactured to specifications other than those in the Part 101 rules.

5. The Commission's Rules allow for waiver of specific rule requirements upon certain showings. Section 1.925 of the Commission's Rules requires a petitioner to demonstrate either that (a) the underlying purpose of the rule will not be served, or would be frustrated by application to the instant case, and a grant of the waiver is otherwise in the public interest; or (b) in view of unique or unusual factual circumstances of the instant case, application of the rule would be inequitable, unduly burdensome or contrary to the public interest, or the applicant has no reasonable alternative.¹⁰

6. Hughes argues that the instant case presents unusual circumstances in that it designed and manufactured the equipment for Teligent based on the relaxed emission parameters permitted under Teligent's waiver of Section 101.111 of the Commission's Rules.¹¹ Therefore, Hughes contends that

⁵ *Id.* at 8270 ¶ 11; *see* 47 C.F.R. § 101.111.

⁶ 47 C.F.R. § 101.139(a).

⁷ *See* FCC File Nos. K3Y-24HX-001 & K3Y-24SX-001. *See also* Letter from John Rymkiewicz, Technical Manager, Hughes Network Systems, to Dale Hatfield, Chief, Office of Engineering and Technology (dated May 24, 2000).

⁸ Waiver Request at 1.

⁹ *See* Amendments to Parts 1, 2, 87 and 101 of the Commission's Rules to License Fixed Services at 24 GHz, WT Docket 99-327, *Report and Order*, FCC 00-272 (rel. August 1, 2000) (*Report and Order*).

¹⁰ 47 C.F.R. § 1.925(b)(3).

¹¹ Waiver Request at 3.

granting it a waiver would provide Teligent with 24 GHz band equipment so it can quickly serve the public.¹² Moreover, Hughes contends that denying it a waiver in this case would be inequitable, because OET has granted equipment authorization to Nortel under similar circumstances.¹³ Finally, Hughes argues that it has no other reasonable alternative if the Commission denies its request. Hughes contends that, absent the requested relief, it will be unable to furnish Teligent with the equipment it manufactured specifically for Teligent under the less stringent emissions parameters.¹⁴

7. We agree that a waiver of Section 101.111 of the Commission's Rules is warranted, pursuant to Section 1.925(a), due to the unique circumstances presented herein. Grant of the requested waiver will allow Hughes to receive Commission certification for its equipment and, in turn, allow Teligent to provide service to the public. This waiver is granted on the condition that Hughes will provide this equipment solely to Teligent.

8. The waiver also is conditioned on compliance with the recently adopted *Report and Order*. The *Report and Order* adopted the emission mask set forth in Section 101.111(a)(2)(ii) of the Commission's Rules, 47 C.F.R. § 101.111(a)(2)(ii), with some modifications for the 24 GHz band.¹⁵ In the *Report and Order*, the Commission recognized the necessity to grandfather equipment deployed under the relaxed emission mask and allowed any such equipment put in place prior to the January 1, 2001 relocation date to be grandfathered for the useful life of the equipment.¹⁶ However, no equipment not meeting the emission standard set forth in Section 101.111(a)(2)(ii) may be deployed after January 1, 2001.¹⁷

IV. CONCLUSION AND ORDERING CLAUSES

9. For the reasons set forth above, IT IS ORDERED pursuant to Section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), and Section 1.925 of the Commission's Rules, 47 C.F.R. § 1.925, that the Request for Waiver of Section 101.111 filed by Hughes Network Systems on July 6, 2000, is HEREBY GRANTED to the extent stated herein.

¹² *Id.*

¹³ *Id.* Nortel was granted its authorization with the condition that the equipment only be provided to Teligent. See Letter to John Shinn, Nortel Networks, Inc. from the Federal Communications Commission (dated March 30, 1999).

¹⁴ Waiver Request at 3.

¹⁵ *Report and Order* at ¶ 58.

¹⁶ *Id.* at ¶ 60.

¹⁷ *Id.*

10. This action is taken under delegated authority pursuant to Sections 0.131 and 0.331 of the Commission's Rules, 47 C.F.R. § 0.131, 0.331.

FEDERAL COMMUNICATIONS COMMISSION

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